

No. 11(112)-8-3 10/86.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. X V of 1947), the Government of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Plasser & Theurer Railway Machinery Manufacturers, Mathura Road, Faridabad.

BEFORE SHRI M.C. BHARDWAJ PRESIDING OFFICER INDUSTRIAL TRIBUNAL
HARYANA FARIDABAD

Reference No. 33 of 1978

Between

SHRI SHIV SAGAR TRIPATHI, WORKMAN AND THE MANAGEMENT OF M/S PLASSER &
THEURER, RAILWAY MACHINERY MANUFACTURERS- MATHURA ROAD
FARIDABAD

Present :—

Shri Sushil Bhattacharya for the workman.
Shri K.P. Agarwal for the management.

AWARD

By order No. ID/FD/503-77/4345, dated 6th February, 1978 the Governor of Haryana referred the following dispute between the management of M/s. Plasser & Theurer Railway Machinery Manufacturers, Mathura Road, Faridabad and its workman Shri Shiv Sagar Tripathi, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the dismissal of Shri Shiv Sagar Tripathi was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 7th July, 1978 ad 18th January, 1979 :—

1. Whether the domestic enquiry has been held in accordance with principles of natural justice: is not vitiated and the findings not perverse?
2. Whether the management paid to the workman wages for interim period between 30th December 1974 and 30th April, 1977?
3. Whether the dismissal order dated 30th April, 1977 is illegal? If wages for the interim period were not paid to the workman?
4. Whether the issuance of show cause notice was essential to be given to the workman after the enquiry?

If issue No. 4 is found in favour of the workman, whether the management gave the said show cause notice after enquiry?

6. Whether the principles of natural justice have been violated by the management, If it is proved that the management failed to give him the said show cause notice?

Issue No. 1.—was treated as preliminary. This issue pertaining to the vires of the enquiry was decided in favour of the management,—*vide* order dated 7th March, 1980 of my predecessor. On other issues, evidence of the parties was recorded. The management produced MW-2 Shri B.R. Verma and closed their case. Then the workman examined himself and closed his case. Arguments were heard. Now I give findings issuewise:—

Issue No. 2.—The management admitted that wages for the interim period 30th December, 1974 to 30th April, 1977 was still not paid to the workman. Therefore, this issue is decided against the management.

Issue No. 3.—The brief facts of the case are that the concerned workman was dismissed on 30th December, 1974 and approval application was filed before the Tribunal for seeking approval of their action by the management. During the pendency of the application the management found some technical defect and requested for withdrawal of the application. The request was granted subject to payment of costs. The management withdrew earlier dismissal order and passed a fresh order on 30th April, 1977 which is challenged in this reference. The workman had contended that until he is paid wages up to the date of his dismissal the order is bad-law. The representative for the workman cited 974 I LLJ page 56. This case is under section 33 (2) in which the original application was withdrawn and a fresh order of discharged was passed by the management. On 2nd application it was held that before acceding approval the Tribunal has to see whether the petitione

had proved payment of wages to the workman. Thus this case is not applicable to the present circumstances as the management had not given for approval of their action. He also cited 1965 II LLJ page 128 in support of his above contention but this ruling is also under section 33 (2) (b). The representative for the management argued that principles of section 33 were not applicable in this case. Because payment of one month's wages was a condition precedent in section 33 (2) (b). Whereas there is no such condition in a case under section 10 of the Industrial Disputes Act. He cited 1978 FJR Vol. 52 page 342 in which it is held that withdrawal by employer of application under section 33 for approval of dismissal—is same as employer not making application for approval—also held the workman can proceed under section 33 (C) (2) only after the Tribunal has adjudicate, on a complaint under section 33-A or on a reference under section 10, that the order of discharge or dismissal passed by the employer was not justified and has set aside that order and reinstated the workman. It is correct that the workman was entitled to the full wages (According to 1974 I LLJ page 56) for the period prior to withdrawal of dismissal letter but this remedy is not under the present proceedings. The management has not contravened the provision of law ethics apart. Therefore, this issue is decided against the workman.

Issue No. 4, 5 & 6.—The representative for the workman cited 1975 II LLJ page 174 and 1973 I LLJ page 278. He argued that failure to give adequate opportunity to show cause against proposed punishment was violation of standing orders and principles of natural justice (1975 II LLJ case under U.P. Industrial Dispute Act). He also argued according to the other rulings cited by him that the Tribunal had full power and jurisdiction to reappraise the evidence, whether the evidence justified the findings of misconduct even if the enquiry proceedings are held to be proper. The representative for the management argued that no 2nd notice was necessary before passing the final order. He cited 1975 Lab. I.C. page 1520 in which it is held that rule of natural justice does not require the delinquent to whom Article 311 is not applicable should be given a second opportunity of showing cause against the proposed punishment. The delinquent becomes entitled to such notice only if his appointment falls within the category of servants referred in Article 311 of the Constitution. He also cited 1969 Lab. I.C. page 847 in which it is held that as regards the modification requiring 2nd show cause notice neither the ordinary law of the land nor the Industrial Law requires an employer to give such a notice. In none of the decisions given by the Courts or the Tribunals such a 2nd show-cause notice in case of removal has ever been admitted or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Article 311. Even that has now been removed by the recent amendment of that Article. To import such a requirement from Article 311 in Industrial matters does not appear to be either necessary or proper and would be equating industrial employees with civil servants. In our view there is no justification for any principle for such equation. He further argued that the standing orders of the company does not provide such 2nd notice. He also cited 1960 I LLJ page 518 (SC) in which it is held that when an employee uses vulgar and indecent language towards the officers then he is liable to be dismissed and the dismissal cannot be objected to on the ground that the punishment is excessive. In these circumstances, I decide issues No. 4, 5 and 6 against the workman.

While answering the reference I give my award that the dismissal of the workman was justified and in order. The workman is not entitled to any relief. I order accordingly.

Dated 17th September, 1980

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 866, dated 19th September, 1980

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

H. L. GUGNANI, Secy.

**PUBLIC WORKS DEPARTMENT
BUILDINGS AND ROADS BRANCH**

Rohtak Circle

The 6th October, 1980

No. S.E./Rohtak Circle/PWD/B&R Branch, Rohtak/28RA/4/622.—Whereas it appears to the Governor of Haryana that land is likely to be required by Government, at public expense, for a public purpose, namely, constructing Kassar Approach Road in Rohtak District, it is hereby notified that the land in the locality described in the specification below is required for the above purpose.

This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana is pleased to authorise the officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested in the above land, who has any objection to the acquisition of any land in the locality, may within thirty days after the date of publication of this notification, file an objection in writing before the Land Acquisition Collector, Haryana, Public Works Department, Buildings and Roads, Ambala Cantt.

SPECIFICATION

District	Tehsil	Locality/Village	Habdist No.	Area in Acres	Khasra No.
Rohtak	Babadurgarh	Sankhol	39	0.29	31 22 21, 1 34 6
Do	Do	Kassar	43	3.24	4 10, 11 5 25/1, 25/2 14/1, 14/2, 15, 17/1, 17/2, 17/3, 14 24/1, 24/2 13/2, 13/3, 14/1, 14/2, 18/1, 18/2, 19 23/1, 23/2 12/2, 13/1, 19 185, 121/1, 121/2, 134, 418, 133, 129
			Total	3.53	

(Sd.) . . ,

Superintending Engineer,
Rohtak Circle.

PUBLIC WORKS DEPARTMENT
BUILDINGS AND ROADS BRANCH
Gurgaon Circle

The 25th September, 1980

No. 28-GA-3/1490.—Whereas it appears to the Governor of Haryana that land is likely to be required to be taken by Government at public expenses, for a public purpose, namely constructing a road from Palwal-Hathin-Uttawar road to Mangorka in Faridabad District, it is hereby notified that the land described in the specification below is required for above purpose

This notification is made under the provisions of section 4 of the Land Acquisition Act, 1894, to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of Haryana, is pleased to authorise the officers, for the time being engaged in the under taking with their servants and workman to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Any person interested who has any objection to the acquisition of any land in the locality, may within thirty days after the date of which public notice of the substance of this notification is given in the locality, file an objection in writing before the Land Acquisition Collector, Public Works Department, Buildings and Roads Branch, Ambala Cantt.

SPECIFICATION

Name of District	Name of Tehsil	Name of Village	Area in Acres	Khasra No.
Faridabad	Hathin	Bhanguri	1.98	31 21, 22, 23, 22, 21, 23, 24, 25
				34 5, 6, 15
				35 1, 2, 3, 4, 5, 6, 7, 8, 9, 10
				36 1, 2, 3/1, 9, 10
				84, 344, 345.
Do	Do	Mangorka	1.44	8 22, 23, 24, 25
				9 2, 3, 4, 5, 6, 7, 8/1, 8/2, 9, 10, 11, 12, 13/1, 13/2, 14, 15, 17/1, 17/2, 17/3, 18/1, 18/2, 19, 20, 21/1, 21/2, 21/3, 22, 23/1, 23/2, 24, 30.
				15 1, 2, 4, 7, 9, 10, 11, 12, 14, 17/1, 17/2, 18/1, 18/2, 22/1, 22/2, 23, 24, 31, 32, 33, 34, 51, 46, 47, 35.
		Total	3.42	

(Sd.) ,

Superintending Engineer,
Gurgaon Circle, P.W.D. B & R. Branch,
Gurgaon.